

Some stress is laid upon the fact, that the order of the 12th February, 1847, was passed by *consent* of parties; but if this be so, it would be as irregular to enlarge it, as to diminish it. If because it was passed by consent, Green must at all events comply with it, it would seem to follow, that the other parties are equally concluded, and that they have now no right to call upon him to pay in a larger amount.

I do not, however, put my opinion entirely upon the ground of its having been passed by consent, though that circumstance may be entitled to some consideration. It stands as an unrescinded order of the court, and must be obeyed.

The court does not see at this time any sufficient reason for rescinding it, and its having been passed with the assent of the parties, certainly would prevent me from interfering with it upon any but very strong grounds.

The rights of the parties to the money, can be adjusted as well after it is paid in, as at this time.

With regard to the sum of \$4592 69, advanced by Green, to Gorman and Riddle, on the 2d September, 1846, it may not be easy at this time to determine, whether that is the precise proportion of the fund, to which they are entitled. It cannot be disputed, I presume, that they were entitled to three-fourths of the net amount of the money received from the government, applicable to the claims assigned to them and Putney, and perhaps, therefore, in any view of the case, justice may be done to Putney, out of the fund now under the control of the court, without recalling any portion of that which has been paid to Gorman & Riddle.

It is insisted, that Putney's share, whatever it may be, must go to Green, as his trustee in insolvency, and it is also insisted that he contributed no part of the money with which the claims of the creditors were brought up.

These questions will be for the present left open, to be decided when the Auditor shall have made his report, but the money so paid, I think, should not, under the circumstances, be ordered to be brought in. If these parties, Gorman and Riddle, have received more than their proportion, they at the proper time will